of monuments, maintenance of pet animals, and transportation and liberation of slaves.

Both on principle and on the authority of the adverse decisions, the doctrine of *Morice* v. *Bishop of Durham*, it is submitted, ought not to be followed except in jurisdictions absolutely bound by their own precedents. The court should interfere at the instance of the testator's next of kin only where there has been a failure or refusal to perform the imposed duty. See 5 HARVARD LAW REVIEW, 389–402.

PURCHASE OF OUTSTANDING TITLE BY A TENANT IN COMMON. — In *Van Horne* v. *Fonda*, 5 Johns. Ch. 388, Chancellor Kent declared that it was inconsistent with good faith and the mutual obligations arising from community of interest for one tenant in common to purchase an outstanding paramount title for his exclusive benefit, and that he did not propose to sanction it. Thus was laid the foundation of a rule which has since become well settled in our law. Whatever title is so acquired inures equally to the benefit of the cotenant, provided only the latter elects, within a reasonable time, to accept it and bear his portion of the expense. Courts follow the lead of the distinguished Chancellor in finding a reason for the rule in the relations of mutual trust and confidence created by joint interest in a common subject. That there may well be cases of cotenancy where no such relation in fact exists, has always been recognized (see *Van Horne* v. *Fonda, supra*), and accordingly an exception, which two recent cases illustrate, has grown up beside the rule. In *Stevens* v. *Reynolds*, 41 N. E. Rep. 931, the Indiana court held that the rule does not apply where the original interests of the cotenants were acquired under different instruments, from different sources, and at different times; and the Texas court, in *Fielding* v. *White*, 32 S. W. Rep. 1054, reached a similar conclusion, laying stress on the additional fact that there had never been any understanding between the parties concerning their interests in the land. Both courts base their conclusions on the absence of that relation of mutual trust on which Chancellor Kent founded his rule, and the results reached are in accord with the weight of authority. *Elston* v. *Piggott*, 94 Ind. 14; *Roberts* v. *Thorn*, 25 Tex. 728; *King* v. *Rowan*, 10 Heisk. 682; Freeman on Cotenancy and Partition, § 155. *Contra*, *Bracken* v. *Cooper*, 80 Ill. 229.

The doctrine laid down in these cases certainly seems unexceptionable. But the general rule itself, to which they establish an exception, though unassailable in point of authority, appears to be somewhat objectionable in principle. Apart from special circumstances, what relation of trust exists between tenants in common which the law can recognize? They may in general deal with each other as with strangers. One may drive as sharp a bargain as he pleases in buying out the other's interest. Unfair and dishonorable as it may often be for one to oust the other by the purchase of a superior outstanding title, it is hard to see what principle of law there can be to forbid it. If, indeed, the tenants are partners, or if one is given charge of the common property by the others, or any other circumstances exist which give rise to a real fiduciary relation between them, the courts may well regard the act under discussion as a breach of obligation. But the bare fact of tenancy in common, where there is actually no relation of mutual confidence, should entail no such consequences.